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ABSTRACT

This is a report of the tentative recommendations of the Harvard University Committee on Governance with respect to the rights and responsibilities of students, faculty, and administrators. The primary focus is on discipline policy. The report is divided into 9 topics. Part I is the Introduction. Part II contains a summary of the 7 major tentative recommendations including authorizing students to sit on boards and committees that consider student disciplinary cases, the adoption of an interim university-wide statement on rights and responsibilities, and the creation of a university-wide faculty-student committee on rights and responsibilities. Part III discusses the present situation at Harvard with regard to rights and responsibilities. Part IV proposes changes in rules governing participation of students on disciplinary boards, and the composition, methods of selection, and procedures of disciplinary boards. Part V proposes that the faculty, if it so wishes, be permitted to delegate all of its disciplinary functions to one or more administrative or judicial boards or committees. Part VI discusses the university-wide statement on rights and responsibilities; Part VII, the university-wide coordination of student discipline; Part VIII, the discipline of persons holding teaching, research and administrative appointments, and Part IX deals with accountability of university officers. (AF)

ED040682

THE UNIVERSITY COMMITTEE ON GOVERNANCE
HARVARD UNIVERSITY

Tentative Recommendations Concerning Rights and Responsibilities

CAMBRIDGE, MASSACHUSETTS
APRIL 1970

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OFFICE OF EDUCATION
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On September 19, 1969, President Nathan M. Pusey, at the request of the Board of Overseers, established the University Committee on Governance to devise ways to improve the governing processes of the University. The Committee, whose membership was selected in a variety of ways by the several constituencies, consists of faculty and student representatives from the Faculty of Arts and Sciences and the eight graduate professional Schools as well as two Overseers, one of the Fellows of Harvard College, a trustee of Radcliffe College, and a representative of the Associated Harvard Alumni. The Committee's reports and recommendations, when in final form, will be submitted to the Governing Boards of the University.

At its first meeting in October the Committee agreed that prior to submitting recommendations to the Governing Boards, it would publish preliminary reports or memoranda to seek the advice and comments of the Harvard community and others who may be interested. This Report contains tentative recommendations with respect to rights and responsibilities. As the work of the Committee progresses, comparable reports with tentative recommendations on or discussions of other subjects will be released.

The Committee hopes to submit its recommendations on rights and responsibilities to the Governing Boards in time for action effective for the academic year 1970–71. It would therefore be appreciated if comments and suggestions are sent to the Committee or given to a member of the Committee by May 22, 1970. The Committee's office is in Wadsworth House, Cambridge, Massachusetts, 02138.

JOHN T. DUNLOP
Chairman

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I.

Introduction

This is a Report of the tentative recommendations of the University Committee on Governance with respect to rights and responsibilities. The Committee as a whole has considered and approved the tentative recommendations; in some cases dissenting views were expressed. The "discussions" following the recommendations are an attempt to explain the Committee's reasoning; they have not formally been discussed or adopted by the Committee. The Report is submitted to the University community for consideration and discussion. The Committee would like to emphasize that it plans to formulate its final recommendations in the light of such discussion.

The Committee hopes to be able to make its recommendations on the subject of rights and responsibilities in time for action effective for the academic year 1970–71; this will be before it completes its work and issues final reports on other matters. We have regarded it as a matter of some urgency that the University community review and appraise University-wide problems of rights and responsibilities and take steps to adapt its institutions and processes to existing needs. This is particularly so because these problems have been the focus of urgent attention within a number of Faculties; it has seemed important that complementary attention should be given to them from a University-wide perspective. Further, in some other Faculties, consideration of problems of rights and responsibilities has been deferred pending the outcome of our Committee's deliberations; in some cases this may have been because University-wide rules seemed to stand in the way of reforms and changes felt to be necessary or desirable. We have consequently concluded that recommendations with respect to rights and responsibilities should be formulated without awaiting the conclusion of the Committee's work on other subjects. (Of course recommendations now made may have to be reappraised in the context of the Committee's later recommendations.)

Underlying the concern of the Harvard community with the issues canvassed in this Report is the fact that some of the problems of discipline which arise today are very different from those which confronted the University when our traditional institutions and procedures were designed. Informal low-visibility procedures

may have been and may continue to be quite appropriate for traditional problems of academic discipline or for isolated cases involving individual students. These procedures come under serious strain, however, under the pressure of concerted activities with highly political overtones. Disruptions today create very different tensions from the Pogo riots of twenty years ago. Similar new problems have arisen in connection with the discipline of persons holding teaching, research and administrative appointments. Thus, a reassessment of our traditional institutions and processes in the light of current needs and problems is highly appropriate.

This Report is divided into the following topics:

I. Introduction
II. Summary of Major Tentative Recommendations
III. Rights and Responsibilities: The Present Situation at Harvard
IV. Proposed Changes in Rules Governing Participation of Students on Disciplinary Boards; the Composition, Methods of Selection and Procedures of Disciplinary Boards
VI. A University-Wide Statement on Rights and Responsibilities
VII. University-Wide Coordination of Student Discipline
VIII. Discipline of Officers of Instruction and Administration
IX. Accountability of University Officers

A general point about this Report should be stressed at the outset. The Committee does not recommend major changes in Harvard's traditionally decentralized approach to problems of discipline; indeed, the Committee recommends retention of the present delegation of basic responsibility for discipline of students to the several Faculties. Rather, we recommend modest changes to improve the present decentralized system; it is in this spirit that our Report should be considered.

II.

Summary of Major Tentative Recommendations

1. **The University Statutes should be amended to permit the Faculties to authorize students to sit on boards and committees that consider student disciplinary cases.**

2. **The several Faculties should be permitted to delegate, under appropriate safeguards, all their disciplinary authority (including the authority to dismiss or expel) to smaller bodies.**
3. **The University should adopt an interim University-wide Statement on Rights and Responsibilities. We propose a process for the adoption of a final University-wide Statement on Rights and Responsibilities.**
4. **Basic responsibility for discipline of students should continue to be exercised by the several Faculties.**
5. **A University-wide faculty-student Committee on Rights and Responsibilities should be created to serve as a continuing forum for the consideration of University-wide problems related to discipline and, in certain situations, to coordinate disciplinary actions involving a number of Faculties.**
6. **In certain narrow classifications of disciplinary cases involving students of more than one Faculty that Committee should be permitted to arrange inter-Faculty fact-finding processes.**
7. **We recommend procedures for the discipline of officers of instruction and administration of the several Faculties.**

III.

Rights and Responsibilities: The Present Situation at Harvard

The Governing Boards have, by the Fifth and Eleventh Statutes of the University, delegated responsibility for student discipline to the various Faculties. (Copies of those Statutes are included in Appendix 1 to this Report.) The Eleventh Statute provides that the Faculties have authority "to inflict, at their discretion, all proper means of discipline." The Fifth Statute gives the Faculties authority to delegate most of their disciplinary powers to Administrative Boards, nominated by the President and appointed by the Corporation with the consent of the Overseers. The present system for handling student discipline, therefore, is decentralized, with each Faculty having responsibility for all aspects of the discipline of its students. Moreover, there are no statutory or other mechanisms for coordinating the disciplinary actions of the several Faculties.

Although the system is decentralized, the Fifth and Eleventh Statutes do contain some significant University-wide rules that

govern disciplinary processes. The Fifth Statute has been construed by University counsel to prevent full participation by students in the work of disciplinary bodies in the several Faculties. The Fifth Statute also prohibits Faculties from delegating the power to dismiss or expel students; and the Eleventh Statute states that no student may be dismissed or expelled except by a two-thirds vote of the members of the Faculty.

Within this statutory framework, procedures for handling questions involving the rights and responsibilties of students fall into three categories:

(1) In some Faculties there has been no change made from procedures which were, until the academic year 1968–69, generally used by all the Faculties. Administrative Boards consist entirely of faculty members and administrators, and operate with no written rules of procedure. In addition, such Faculties have no written statements on the rights and responsibilities of students, sometimes with the exception of traditional parietal regulations.

(2) Other Faculties, in response to events during the period 1967–69, have on an interim or permanent basis made significant changes in their procedures and institutions. These have included the adoption of written statements of rights and responsibilities; the establishment of disciplinary committees which include students; the election of both faculty and student members to these committees; and the adoption of written procedural rules to govern the hearing of cases. In at least one case the temporary permission of the Governing Boards was obtained for students to participate fully in the work of a disciplinary committee.

(3) Other Faculties are in the process of considering changes with respect to rights and responsibilities. In at least one case proposals for change were advanced and then put aside on the ground that the recommendations of the Committee on Governance should be awaited. That Faculty, however, allows students to sit on its Administrative Board on a non-voting basis.

The situation concerning persons holding teaching, research or administrative appointments is this: The Third Statute of the University states that officers of instruction may be removed by the Corporation only for grave misconduct or neglect of duty; other holders of Corporation appointments may be removed for

grave misconduct or for failure to perform their duties satisfactorily. (The relevant part of that Statute appears in Appendix 1.) But apparently there are no established University-wide or intra-Faculty processes for the discipline of such persons. Those Faculties which have recently adopted statements on rights and responsibilities have made them applicable to persons holding teaching, research or administrative appointments; and the Faculty of Arts and Sciences is currently considering proposals with respect to the discipline of such persons.

IV.

Proposed Changes in Rules Governing Participation of Students on Disciplinary Boards; the Composition, Methods of Selection and Procedures of Disciplinary Boards

A. Tentative Recommendations

1. **We recommend that the University Statutes be amended to authorize the individual Faculties to include students as members of Administrative Boards or other committees exercising disciplinary power under the Fifth and Eleventh Statutes of the University.**
2. **We recommend that the University Committee on Rights and Responsibilities (whose creation we recommend in Part VII, below) be charged with working out for appropriate submission to the Faculties and Governing Boards general limitations and guidelines with respect to the composition and procedures of such Boards or committees.**
3. **We recommend that, pending the working out and adoption of the general criteria referred to in paragraph 2, above, the plan adopted by a Faculty for the composition of each Administrative Board or committee exercising such disciplinary power be subject to the approval of the Governing Boards.**
4. **The Committee is not yet ready to take a position on the question whether and what changes there should be in the present requirement of the Fifth Statute that members of Administrative Boards (or other committees exercising disciplinary power) be nominated by the President and appointed by the Corporation with the consent of the Overseers. This requirement will be re-**

viewed by the Committee in the broader context of its discussions on the role of the Governing Boards.

5. **We recommend that each Faculty review carefully existing mechanisms and procedures for handling student disciplinary cases. The review should include consideration of student participation in disciplinary decisions; the composition and selection of members of disciplinary bodies; and procedures to be followed in disciplinary cases.**

B. Discussion

Recommendation 1. As was mentioned in Section III, above, the Fifth Statute of the University has been construed to prevent the full participation of students on boards or committees handling student disciplinary cases in the several Faculties. (Thus, in order to include students on its interim Committee on Rights and Responsibilities, the Faculty of Arts and Sciences had to receive special permission from the Governing Boards.) Some Faculties have permitted varying degrees of student participation but are uncertain of the legality of these arrangements; the Law School's consideration of a disciplinary mechanism that permits full student participation has been inhibited.

In the view of the Committee on Governance, the basic question is not whether students should be members of disciplinary boards, but whether that issue should be determined by a University-wide rule rather than by the individual Faculties. The Committee does not believe that this question, the appropriate answer to which may vary from School to School, should be resolved by the Statutes. The several Faculties, which have been delegated disciplinary powers under the Fifth and Eleventh Statutes, should have the right, subject to the limitations set forth below, to decide whether and to what extent they want to have students participating in the disciplinary process. Accordingly, the Committee recommends that the Fifth Statute be amended to permit the Faculties to make these choices.

The Committee recognizes that in the individual Faculties, Administrative Boards exercising power under the Fifth Statute perform a variety of functions other than the imposition of discipline. Our present recommendations, limited to problems of discipline, do not touch the question whether students should participate on these other matters. Our sole recommendation at

present is that the Faculties be authorized to permit students to participate in the imposition of discipline.

The Committee's recommendation does not distinguish between different types of disciplinary cases (e.g., academic vs. nonacademic; cases involving individual action vs. concerted activities; etc.). We recognize that a given Faculty may wish to draw such distinctions; but again it seems to us unwise to determine this on a University-wide basis.

Recommendations 2, 3, and 4. The Committee gave careful consideration to the question whether the Statutes, if they are amended to permit student membership on disciplinary boards, should also contain limitations or guidelines concerning the composition and procedures of such boards. The Statutes might include, for example, a requirement that the majority of the members of a disciplinary board be faculty members. Or, in view of the questions of privacy that may arise in a disciplinary proceeding, the Statutes might grant a student appearing before a board including students the right to have his case heard and decided only by faculty members; at least one Faculty now follows such a procedure.

The Committee has concluded that it would be unwise at this time to press for any quick answer to the question of what limitations and guidelines are appropriate; these are matters on which the securing of a University-wide consensus will require extended discussion and consideration. We therefore recommend that the University Committee on Rights and Responsibilities (see Part VII, below), whose membership will be drawn (when possible) from the disciplinary committees of the several Faculties, be charged with developing for appropriate submission to the Faculties and Governing Boards general limitations and guidelines for the composition and procedures of disciplinary boards. (Some of these criteria might be incorporated into the Statutes; others might be guidelines serving as recommendations to the Faculties.) Pending the adoption of such ground rules, the Committee recommends that the plan adopted by a Faculty for the composition of its disciplinary board be submitted to the Governing Boards for their approval.

The Committee takes no position at this time on the present requirement of the Fifth Statute that members of disciplinary boards (or other disciplinary committees) be nominated by the President and appointed by the Corporation with the consent

of the Overseers. (There is no disposition to propose any changes in the existing practice whereby each Faculty determines for itself by what process (e.g., election or appointment) the members of its disciplinary boards or committees are designated.) Some members of the Committee expressed the view that the requirement has become a mere formality and should be eliminated. Others stated that in view of the serious nature of disciplinary actions, persons responsible for such actions should hold Corporation appointments even if the real choice is made within the individual School. The majority of the Committee concluded that it is more appropriate to consider this requirement in the broader context of the Committee's review of the role of the Governing Boards, rather than in the context of a discussion of rights and responsibilities.

Recommendation 5. Since 1967 members of the Harvard community have raised many questions about the University's traditional disciplinary processes in the context of new needs and problems. These questions have touched on such basic issues as the fairness of proceedings if there is no written code of conduct or rules of procedure, or if there is no student participation in deciding student disciplinary cases. It seems to us important that those Faculties which have not done so should address themselves to these issues and should review existing mechanisms and procedures for resolving questions of the rights and responsibilities of students. In addition, our hope is that a later Report from our Committee can be helpful to the University community by addressing and discussing these issues to reflect some of our discussions of them.

V.
Full Faculties as Disciplinary Bodies

A. Tentative Recommendation

1. We recommend that if a Faculty reaches the conclusion that it cannot appropriately or does not wish to exercise disciplinary authority sitting as a whole, it be permitted to delegate *all* of the disciplinary functions it now exercises under the Fifth and Eleventh Statutes to one or more administrative or judicial boards or committees (consisting of faculty or faculty and students), *provided that*

(a) the recommendations made in paragraphs 2 and 3 of Part IV, above, should be applicable to any such delegation; and

(b) if the Faculty wishes to delegate its power to dismiss or expel,

(i) the delegation must be voted by two thirds of the faculty present and voting, and

(ii) it must be provided that in any individual case of dismission or expulsion, the penalty must be voted by two thirds of a faculty or faculty-student body whose membership does not include any person sitting on the administrative or judicial board or committee which initially heard the case and recommended the penalty.

B. Discussion

At present the University Statutes permit the Faculties to delegate to Administrative Boards their powers relating to ordinary matters of discipline, but expressly except the power to dismiss or expel. Our recommendation is that each Faculty be permitted to make a considered judgment that, even in cases of dismission and expulsion, delegation to a smaller body is appropriate.

This recommendation does not represent the collective judgment of the Committee that it is wise or appropriate for any Faculty to delegate its full disciplinary powers to a smaller body; indeed, some members of the Committee felt strongly that, in view of the nature and severity of these penalties, in cases of dismission or expulsion full Faculties should continue to exercise the ultimate responsibility. Nevertheless, the view was that a Faculty in which there is a consensus that the group has become too large to exercise this responsibility wisely or fairly should not be *prevented* by the Statutes from delegating this power. Leaving discretion to individual Faculties was felt to be particularly appropriate since opinions within the Committee varied widely between delegations from different Faculties, probably reflecting differences in the practices and traditions of the various Faculties with respect to discipline.*

* The argument that it is inappropriate for a large Faculty to consider individual disciplinary cases was made primarily by delegations from the professional schools; the argument assumed that the Faculty would act in a quasi-judicial capacity. It was pointed out, in contrast, that size does not present a serious

The recommendation does not specify the size or composition of the delegee body or bodies (beyond stating that it could include students if the Faculty so chooses). Thus a Faculty could simply create a "judicial committee" of its members to exercise whatever authority it now exercises in disciplinary cases. Or a Faculty could delegate its powers to a committee including students as well as faculty. The recommendation, by cross-referring to the recommendations with respect to Administrative Boards, does specify that the Governing Boards must approve each Faculty's plan of delegation (until such time as general University-wide guidelines have been worked out and adopted).

We recommend the establishment of some safeguards with respect to any delegation of the power to dismiss or expel. Under the present Statutes a student cannot be dismissed or expelled unless so voted by two thirds of the faculty present and voting. We think it appropriate that if a Faculty should decide to delegate its power to dismiss or expel, the decision be voted by at least two thirds of the faculty present and voting. (It may be appropriate for a Faculty to reconsider any such delegation annually.) We further recommend that in individual cases involving dismission and expulsion, any delegation must involve at least two separate bodies: one to hear the case initially and recommend punishment, the second to exercise ultimate responsibility, a two-thirds vote in the second body being required to approve any decision to dismiss or expel. These limitations should make it clear that the theory of our recommendation is not to make it easier to dismiss or expel students, but simply to allow a Faculty to consider these cases in a setting and under procedures which that Faculty considers appropriate and fair.

VI.
A University-Wide Statement on Rights and Responsibilities

A. Tentative Recommendations

1. We recommend that the University adopt a University-wide Statement on Rights and Responsibilities.

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problem where a Faculty traditionally exercises only a narrow review over its Administrative Board, focusing on the general standards and criteria applied rather than on the facts of a particular case.

2. **We recommend that the Governing Boards adopt and promulgate for the University as a whole, effective July 1, 1970, *but on an interim basis only*, the Resolution on Rights and Responsibilities adopted by the Faculty of Arts and Sciences on April 14, 1970.***
3. **We recommend that at the same time the Governing Boards invite the several Faculties, the students, and others interested, to discuss that interim Statement, and to submit comments, suggestions, recommendations and reactions. All such submissions should be forwarded by the Governing Boards for consideration to the University Committee on Rights and Responsibilities whose creation we suggest in Part VII, below, or to any University Senate or Council which may by then be exercising its functions. The Committee, or such Senate or Council, as the case may be, should then proceed to prepare a final Statement on Rights and Responsibilities for appropriate submission to the Faculties and the Governing Boards.**

B. Discussion

The Committee's consideration of these recommendations focused primarily on two issues: First, is there a need for a University-wide Statement on Rights and Responsibilities? Second, if there is such a need, by what processes should such a statement come into being?

The Committee concluded that it would be useful for the University to adopt a University-wide Statement on Rights and Responsibilities. The argument has been made that there may in fact exist misunderstanding and confusion in the community about what are the basic obligations of members of the community. This view has led several Faculties to consider the adoption of "internal" Statements on Rights and Responsibilities. But we think it important to stress that there are some fundamental rights and responsibilities that are common to all the Faculties and that it is appropriate to have them set forth in a document applicable to the entire University. Furthermore, the Committee believes that the existence of such a Statement would help meet the argument that it is unfair to impose discipline on the basis of unwritten "common-law" rules, and would provide an appro-

* That Resolution is appended to this Report as Appendix 2.

priate and helpful jurisdictional basis for the coordinating mechanisms that the Committee recommends be created to coordinate disciplinary actions of the several Faculties.

Having concluded that the adoption of a University-wide Statement should be recommended, the Committee turned to the question of how this should be implemented. We soon concluded that, if action was to be taken in time to be effective for the academic year 1970–71, an *interim* Statement would have to be adopted, since it would be quite unrealistic to expect all of the many decentralized constituencies of this University community to agree on the formulation and adoption of a definitive Statement by the end of June, 1970. Further, we noted that the Faculty of Arts and Sciences, and in particular its faculty-student Committee of Fifteen, has been engaged for the past twelve months in evolving a Statement on Rights and Responsibilities. It seemed sensible to us to recommend that the University make use, on an interim basis, of this enormous effort by its central Faculty.

Accordingly, the Committee recommends that, on an interim basis only, the Resolution on Rights and Responsibilities, adopted by the Faculty of Arts and Sciences on April 14, 1970, be adopted and promulgated for the entire University by the Governing Boards. (The text of the Resolution appears in Appendix 2.) In making this recommendation, the Committee recognizes that the several Faculties (and the Committee itself) might write the Resolution somewhat differently if they were writing on a clean slate. The question which the Committee addressed and answered affirmatively is whether the Resolution adopted by the Faculty of Arts and Sciences is acceptable on an interim basis for the entire University. We ask the rest of the Harvard community to focus on this limited question.

Recommendation 3 provides a mechanism for moving from an interim Statement to a more permanent one. We recommend that the Governing Boards, in promulgating the interim Statement, should invite the members of the Harvard community to consider and comment on it. The matter would then be considered by the University Committee on Rights and Responsibilities (see Section VII, below), or by any University Senate or Council which may by then be exercising its functions. A final Statement

could then be prepared for appropriate action by the Faculties and Governing Boards.

In view of the fact that we are now proposing only an *interim* Statement, it seems to us appropriate that that document simply be promulgated for the University as a whole by the Governing Boards. This is, of course, without prejudice to the question of what processes should be used for the adoption of a definitive Statement. We call for "appropriate" submission to the Faculties and Governing Boards, and we would expect the University Committee on Rights and Responsibilities to work out a plan for this process.

VII.

University-Wide Coordination of Student Discipline

A. Tentative Recommendations

1. We recommend that basic responsibility for discipline of students continue to be exercised by the several Faculties. In order to permit this decentralized system of student discipline to function on a sounder basis, we recommend the creation of a University Committee on Rights and Responsibilities to serve as an advisory body and a forum for the consideration of University-wide policy problems related to discipline and, in certain situations described below, to coordinate disciplinary actions.

2. The University Committee on Rights and Responsibilities should have delegations from all Schools; each such delegation should include faculty members and students. (The Committee on Governance will make recommendations as to the composition of the Committee after parallel questions in connection with a University Senate have been preliminarily explored.) Each Faculty should designate its delegation to such University Committee by such processes (e.g., election, or appointment by its Dean, etc.) as it deems appropriate; we recommend, however, a requirement that such delegation be drawn (when possible) from the Administrative Boards or committees of the various Faculties exercising powers under the Fifth Statute of the University. (This would not be possible for Schools with no such Board or committee, or with respect to students from Schools

where they do not serve on such Boards or committees.) In order to harmonize the status of this Committee with that of Administrative Boards (and subject to the same reconsideration, see paragraph IV (4), above), members should receive Corporation appointments.

3. The University Committee on Rights and Responsibilities would, from time to time, review problems of rights and responsibilities (including the structures and procedures set up pursuant to these recommendations) and recommend changes. It would be responsible for the preparation of a definitive University-wide Statement on Rights and Responsibilities for submission to the Faculties and the Governing Boards for appropriate action in accordance with the recommendations made in Part VI, above, and for its periodic review. It would render advice to the Governing Boards and to the various Faculties with respect to disciplinary structures, standards and procedures. It would consider proposals to be made to the Faculties and Governing Boards for changes in its own composition or functions. It would serve, further, as a clearing house for the exchange of information between Schools about disciplinary cases and other questions regarding rights and responsibilities of potential University-wide concern.
4. The University Committee on Rights and Responsibilities would also be responsible for coordinating disciplinary action, in the manner described in the following paragraphs, in cases where possible violations of the University Statement on Rights and Responsibilities involved students from two or more Faculties. We strongly urge that that Committee delegate such coordinating functions to a small Executive Council drawn from its membership, such functions to be exercised in accordance with policies, regulations and procedures worked out by the Committee.
5. If there is reason to believe that there has been a violation of the University Statement on Rights and Responsibilities in which students from two or more Faculties were involved, the Committee * should forthwith convene the Administrative Boards (or other disciplinary committees), or representatives

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* Hereinafter, in paragraphs 5–8, in referring to the "Committee" we assume that the function referred to could be exercised by the recommended Executive Council, unless the context makes clear that a reference to the full Committee is intended.

thereof, of the Faculties concerned. It should attempt by a continuing process of consultation to insure that the separate disciplinary proceedings proceed on a coordinated and cooperative basis, that duplication and wasted effort be avoided, that policy questions be jointly canvassed before decision is made, that the procedures followed avoid arbitrary divergences, and that unjustified disparities in fact finding, interpretations of rules or in imposing sanctions be avoided.

6. In cases where the "center of gravity" of the case is determined to be in one Faculty or another (e.g., one Law School student participates with twenty College students in an obstructive sit-in in the College), and the Committee believes that independent fact-finding proceedings in the two Faculties would be wasteful or undesirable, we recommend that the Committee, after consultation with the affected Administrative Boards (or other disciplinary committees), have the power to arrange to have the facts of all the cases heard by the Board or committee of the most concerned Faculty, with, however, the *ad hoc* participation of the representatives of the second Faculty's Board or committee in the hearings. Such participation should be sufficiently broad and extensive to insure that when the findings are reported back to the second Faculty's Board or committee for disciplinary action, such action can be based on a meaningful and perceptive appraisal of and "feel" for the facts. The Committee should, of course, continue in such a case to arrange such coordination between the two Faculties as may be necessary to avoid arbitrary disparities in sanctions imposed.

7. We believe that in the vast majority of cases undesirable multiplicity and disparity can be effectively avoided by the coordinating efforts described above. There may, however, arise cases where

   (a) there are considerable numbers of students involved;

   (b) it appears that significant factual questions regarding individual students have to be resolved;

   (c) effective coordination, particularly of the fact-finding process, is difficult, either because students from so many Faculties are involved that it is not feasible, or because the relevant groups cannot be persuaded to agree on reasonably consistent and coordinated processes; and

(d) no one School constitutes a clear center of gravity, so that it would be plainly inappropriate to have all the hearings before the Board or committee of one Faculty.

If the Committee, considering these and other relevant factors, finds that it is desirable to do so, we recommend that it have the power, under procedures established in advance, to arrange for hearings to be held, not before the Administrative Board or committee of any particular Faculty, but before hearing panels set up by the Committee. Such panels should be comprised of faculty and students from a pool consisting of the Administrative Boards or disciplinary committees of the affected Schools, and a majority of each panel should be drawn from the School of the student being tried by that panel.

8. Findings of all such panels should be reviewed by the Committee so that inconsistencies can be noticed and appropriate procedures for resolving them can be instituted. The findings should then be reported to the Board or committee of the relevant Faculty for the imposition of discipline. If the full Committee (rather than any delegee Executive Council) deems it appropriate, such findings may be accompanied by recommendations as to discipline. The Committee should continue its efforts to coordinate action so as to avoid arbitrary disparities in sanctions.
9. We recommend that the full University Committee on Rights and Responsibilities adopt and promulgate rules of procedure for the conduct of the hearings held pursuant to recommendation 7, above.
10. The Committee has carefully considered the question whether a central body (such as the proposed University Committee on Rights and Responsibilities or its Executive Council) should have the power, in certain cases, not only to coordinate the action of the various Faculties, or to provide for coordinated hearings by hearing panels under centralized procedures, but also itself to decide on and impose discipline. The present consensus of the Committee is that at this time the University should not establish such a central body with full judicial authority. We would hope that this issue will be fully discussed in the coming weeks. Further, we recognize that the future may teach us that our present recommendations are inadequate to deal with the dangers of arbitrary and unacceptable disparities in discipli-

nary mechanisms and sanctions. We recommend that the University Committee on Rights and Responsibilities, or its successor, reappraise, from time to time, the question whether further centralization of University discipline is necessary or desirable, and if so recommend changes.

11. **If this Committee should in a subsequent report recommend that a University Senate or Council be created, that recommendation could very well include the proposal that that body, or one of its committees or subcommittees, succeed to the duties and responsibilities of the University Committee on Rights and Responsibilities. Thus it must be emphasized that the precise structures here recommended are in a special sense experimental and may turn out to be entirely transitional.**

B. Discussion

Decentralized Authority Over Discipline: Advantages and Disadvantages. Perhaps the most important issue canvassed by the Committee in connection with problems of student discipline was the issue of centralization: should the existing system whereby each Faculty exercises full responsibility for the discipline of its students be retained, or modified, or abandoned?

The problems and difficulties which could arise under the present system are not difficult to enumerate. A single disruptive event can and has involved students from a number of different Schools. This could lead to the effort and waste of a multiplicity of disciplinary proceedings, the use of unjustifiably divergent procedures for students involved in the same incident, and irrational disparities in fact finding, interpretation of rules or in imposing sanctions. More generally, certain types of disruption can affect the fundamental order of the entire University, and the whole University has a stake in how such incidents are handled.

On the other hand, there are serious considerations which militate against abandonment of Harvard's tradition of decentralization. Most important is that disciplinary institutions and processes, to be effective, must be acceptable, and acceptability may be jeopardized by the comparative remoteness which centralization would entail. Both faculty members and students on our Committee raised serious questions whether a University-wide disciplinary committee with full judicial powers could, today, adequately command the confidence of the various University

constituencies. The argument was stressed that there do exist bonds of confidence between the Faculties and *their* students (based in part on the students' sense that they have an access to their Faculty which they cannot expect from the University "at large") which are essential bases for the legitimacy of disciplinary institutions and processes.

Further, the argument was stressed that decentralization has permitted us to adapt our procedures and institutions – and, indeed, our philosophies respecting discipline – to the different needs and problems of the various Schools. Discipline can have tremendous impact on the life of a given School, and the best judges of how it should be managed may thus be those most familiar with the life of that School. The danger cannot be discounted that disciplinary decisions rendered by a comparatively remote central authority would, therefore, increase the possibilities of confrontation and division by failing to secure the consent of faculty and students.

Finally, the question was raised whether today's disruptions, so political in nature and effect, are likely to be with us as a permanent or long-range condition. If not, will the need for University-wide disciplinary mechanisms survive them? It was argued that it would be a mistake to create centralized institutions only to find that the need for them was a transitory phase.*

The Committee's Tentative Resolution: Coordination in Lieu of Centralization. Taking into account all of these considerations, the tentative conclusion that prevailed within the Committee was that ultimate power over discipline should continue to be lodged in the several Faculties. We reached that conclusion on the grounds that the advantages of decentralization are (and are widely perceived in the community to be) extremely significant,

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* A less significant, though not unserious, argument against the creation of a central "judicial" committee with full disciplinary authority was the difficulty of finding an intelligible and sensible definition for its jurisdiction. What cases are to be decided by the "central" body? What cases should continue under the jurisdiction of the Faculties? Jurisdictional issues are comparatively unimportant if a central committee has primarily coordinating functions; but if full decisional power is to go from the Faculties to such a body, enormous "pressure" is put on the jurisdictional issue. And, on close examination, finding a defensible and workable jurisdictional line turns out to be a difficult and awkward task.

Further, in order to command confidence, a central body exercising full judicial authority would have to be adequately "representative," and thus pressure would also be put on the question of its exact size and composition.

and that many of the potential disadvantages of decentralization can be alleviated by modest modifications in our current practices.

It is these modifications that constitute our recommendations in this Part VII of our Report. In order to make these recommendations as intelligible as possible, we have stated them rather fully and discursively above; and it would thus be redundant to restate them in this Discussion. The general principles which actuated those recommendations should, however, be stressed. The basic view that secured the agreement of many of the Committee was that, before adopting a centralized system of discipline, we should at least try to see whether coordination between Faculties cannot avoid the arbitrary disparities and divergences which seem to be the principal dangers of the existing decentralized system. The suggestion was made that in cases involving students from several Schools, communication and consultation between the disciplinary committees of the several Faculties should enable the cases to be dealt with in a sensible and cooperative manner, and that what is needed is a mechanism to facilitate such coordination. That is why we recommend the creation of a University-wide Committee on Rights and Responsibilities (Recommendations 1 and 2), one of the principal functions of which would be such a task of coordination (Recommendation 5).

Secondly, it was the consensus that wasteful duplication and vulnerable divergences can best be avoided if the University has available, as a facility in case of need, inter-Faculty mechanisms for joint fact finding in certain types of cases involving students from a number of Schools. One type of situation is dealt with in Recommendation 6, which would, where the center of gravity of the incident is clearly in one Faculty, permit the facts of all the individual cases to be determined by the disciplinary board or committee of that Faculty.* Another, presumably rare, type of

* The recommendation makes clear that representatives of the committee or board of the Faculty which has the ultimate responsibility to discipline a student should participate in the fact-finding process conducted in the Faculty which is the "center of gravity," and that such participation should be sufficiently "deep" to enable the former Faculty's committee or board to acquire a truly meaningful understanding of the case. It was argued in our Committee that this is impossible, and that consequently it is always undesirable to have the fact-finding function lodged in a different body from the one which must make the ultimate judgment about discipline. But whether this is so may depend on the type of case and on the foresight and care with which participation and coordination between the

situation would be one involving a University-wide disruption on a mass basis by students from many Faculties, where coordination of the fact-finding processes might turn out to be impracticable or impossible. Recommendations 7–9 would permit the University Committee on Rights and Responsibilities to organize hearing panels to hear all of the cases, these panels to operate under standing uniform rules of procedure. (The panels would again involve the participation of the members of the disciplinary committee of the School which retains the ultimate power to discipline.)

Two further general points should be stressed. First, we do not recommend a mandate that in any given type of case inter-Faculty fact-finding processes be used. What we do recommend is that these mechanisms be available to the University; the decision whether to use them in a given instance would be made by the University Committee on Rights and Responsibilities (or its delegee Executive Council under standards formulated by the Committee) in light of the facts of a given case. Indeed, we would expect that in the vast majority of cases no resort should have to be made to anything beyond common-sense voluntary cooperation between the affected Schools.

Second, we think it important to emphasize the point made in Recommendation 4, that the actual task of coordination in a given case can most effectively be handled by a small group acting as a delegee of the University Committee on Rights and Responsibilities; similarly, the decision whether resort should be had to the emergency processes outlined in Recommendations 6–9, and to which ones, should ordinarily be made, under standards worked out by the Committee, by a small group which can act with speed and effectiveness.

The University-wide Committee on Rights and Responsibilities. It is important to stress the tentative nature of our conclusions. Experience is basically inadequate at this juncture to justify any definitive conclusion on the question of how much centralization of discipline is needed at Harvard. We therefore attach importance

affected Faculties are arranged. Surely experience at this point is inadequate to justify the conclusion that the type of inter-Faculty fact finding which we recommend can never be fruitfully or wisely employed. It should be noted that we do not recommend a mandate that such inter-Faculty fact finding *must* be employed in any given type of case: we regard this simply as a facility which should be available to be used when and if it is judged to be appropriate and helpful.

to our proposed mandate to the University Committee on Rights and Responsibilities to undertake continuing oversight from a University-wide perspective over the disciplinary processes and structures of the University. (Recommendations 3 and 10.) That Committee would assure that there exists a ready mechanism for exchanging information and views and proposing needed changes and improvements with respect to inter-Faculty and University-wide problems of rights and responsibilities.

Our Recommendation 2, dealing with the composition of the proposed Committee, is at this stage very preliminary. The Committee should clearly be widely representative, including delegations from all the Schools; each such delegation should include students. The method by which the delegations are designated from each School – whether by election, or appointment, or otherwise – should clearly be left to each Faculty. It is important, however, and we therefore recommend a requirement, that the delegation be drawn, whenever possible, from the members of the Boards or committees exercising disciplinary powers within the several Schools.

The question whether members of the University Committee on Rights and Responsibilities should have Corporation appointments as members seems to us to raise the same issues as the question whether members of "internal" Administrative Boards should have such appointments. We therefore recommend parallel treatment to these issues. (Cf. the discussion of Recommendation IV (4), at pp. 7–8, above.)

Finally, attention should be drawn to the caveat in Recommendation 11. Our proposal for a University Committee on Rights and Responsibilities will have to be reassessed in the light of any recommendation that may be forthcoming from our Committee for the creation of a University Senate or Council.

VIII.

Discipline of Officers of Instruction and Administration

A. Tentative Recommendations

1. We recommend that the procedures outlined below apply to the discipline of persons holding teaching, research and admin-

istrative appointments by the Corporation in any Faculty in cases involving a violation of third paragraph of the University-wide Resolution on Rights and Responsibilities. (The various Faculties are invited to consider the question whether these procedures should also apply to all cases involving grave misconduct or neglect of duty arising under the Third Statute of the University. The proposals being considered in the Faculty of Arts and Sciences for the discipline of officers of instruction and administration do have such wider application.)

2. If a complaint is made against any such person that there has been such a violation, a committee drawn from the relevant Faculty shall investigate the facts. The size of such committee, the ratio of tenured to non-tenured members, the method of its selection, and the working out of appropriate complaint and hearing procedures shall be left to the individual Faculties. The committee would make findings of fact and issue recommendations with respect to whether further action is warranted, and would transmit these to the Corporation.
3. If the committee's conclusion is that further action is warranted, or if the Corporation should decide that it is advisable to have the case further considered, such findings and recommendations shall be forwarded to a joint committee of two Fellows and three members of the relevant Faculty. The joint committee, after considering the case, would recommend to the President and Fellows what action, if any, is appropriate.
4. We recommend that in any given case no faculty member serve on both the committees referred to above; we also recommend that the faculty members of both committees should be known in advance, so that their designation is not delayed until after a case has arisen.
5. In any case where a person is both a student and has a Corporation appointment specified in paragraph 1, above, the question of his status as a student should first be determined, in accordance with the procedures governing the discipline of students in his School (including any University-wide fact-finding mechanism adopted pursuant to the recommendations in Part VII). If such a proceeding leads to his separation as a student, and if his appointment is conditioned on his being a student (e.g., certain teaching fellows), the appointment will automatically terminate. If a separate proceeding is necessary to

determine whether such person should retain his Corporation appointment, the procedures specified in this Part VIII of our report should be followed.* Any board or committee charged with the finding of facts in any such case may, if the individual involved agrees, adopt findings of fact already made by any other duly constituted board or committee which has considered the case.

B. Discussion

As pointed out in Part III, above, although the Third Statute of the University states under what circumstances officers of instruction and administration can be removed, there seem to be no established University-wide or intra-Faculty procedures for the discipline of such persons. The Committee's tentative recommendations would provide a mechanism for the discipline of such persons in cases involving violations of the third paragraph of the University-wide Statement on Rights and Responsibilities. Although the recommended mehchanism would provide a model for considering all cases involving grave misconduct or neglect of duty arising under the Third Statute, the Committee has not been able to give sufficient attention to the great variety of issues and circumstances that such cases might involve. Accordingly, the Committee at this time has limited its recommendations to violations of the Statement on Rights and Responsibilities; we would appreciate the views of the various Faculties on whether the recommendations should apply to all cases of grave misconduct or neglect of duty arising under the Third Statute.

In the course of its discussions of the recommendations in this Part, the Committee considered the "Statement on Procedural Standards in Faculty Dismissal Proceedings" of the American Association of University Professors (AAUP)†, the principal AAUP statement on faculty disciplinary actions. That Statement suggests that if a case cannot be settled informally, an all-faculty

* Of course a decision not to separate a student may leave open the question of his fitness to teach.

† Much of the AAUP *Statement* is concerned with the elements of a fair hearing, such as the right to be informed of the precise nature of charges and the right to appear and defend oneself. This aspect of the AAUP *Statement* was not considered by the Committee; the Committee believes, of course, that fair hearings should be a necessary element of disciplinary proceedings, regardless of the mechanisms that Harvard adopts.

committee hold hearings and issue a report that includes findings and a decision on each charge. This report is then transmitted by the institution's president to the governing board. The governing board, after such review as it deems appropriate, can either sustain the committee's decision or return it to the committee for reconsideration. After such reconsideration, the governing board again considers the matter and reaches a final decision.

The primary difference between the AAUP's model and our recommendation is that under the AAUP procedures an *all*-faculty body makes the final recommendations to the governing board, whereas under the Committee's proposals a joint committee of three faculty members and two Fellows, having taken into account the report of an all-faculty committee, makes such recommendations.

Some members of the Committee felt that faculty discipline should be, to the maximum extent possible, the responsibility of the Faculties and consequently preferred the AAUP model. In the view of these members, if an all-faculty body makes the final recommendations, there is likely to be greater confidence in the disciplinary system. However, a strong majority of the Committee preferred the joint committee arrangement, which has been used at Harvard on an *ad hoc* basis for at least the past two decades. Important to this conclusion is the belief that the discipline of persons holding teaching, research or administrative appointments from the Corporation is a matter of legitimate concern both to the Faculties and the Governing Boards, and that the joint committee arrangement gives effect to both concerns and is less likely to lead to a confrontation between a Faculty and the Governing Boards. It also should be noted that the AAUP *Statement* says that the standards recommended in it "are not intended to establish a norm in the same manner as the 1940 *Statement of Principles on Academic Freedom and Tenure*, but are presented rather as a guide to be used according to the nature and traditions of particular institutions in giving effect to both faculty tenure rights and the obligations of faculty members in the academic community."

Recommendations 4 and 5 are self-explanatory. The former is a suggested guideline for the Faculties in constituting the disciplinary committees to consider the cases of colleagues. The latter sets forth procedures for considering cases of persons who

are both students and hold Corporation appointments. The Faculties are invited to review carefully the applicability and suitability of these procedures to persons of such mixed status within their Schools.

IX.
Accountability of University Officers

The Committee does not yet have specific recommendations to present with respect to new University-wide institutions needed to assess the policies and assure the responsibility of those whose decisions affect the life of the University. The complex problem of accountability is relevant to many aspects of the structure and processes of government of any institution. Accordingly, the Committee is giving attention to this problem as a necessary and integral part of its present study of the central government of the University (including such questions as the need for a limited tenure for administrative officers; the need for a University Senate or Council; the need for an Ombudsman commission; etc.).

The Committee would like to bring to the attention of the various Faculties the proposal that is now pending in the Faculty of Arts and Sciences for the creation of a faculty-student commission to help assure appropriate responsiveness to inquiries, suggestions and complaints in the Arts and Sciences community. In light of the general principles expressed in the proposed University-wide Statement on Rights and Responsibilities, the Committee recommends that each Faculty consider the question of developing similar and complementary institutions and processes.

APPENDIX 1

University Statutes

(From *History and Government of Harvard University,* December 1968.)

3. **Tenures of Office.** All officers of instruction are subject to removal by the Corporation only for grave misconduct or neglect of duty. All other holders of Corporation appointments (including administrative officers) may be removed from such appointments by the Corporation for grave misconduct or whenever, in its opinion, their duties are not satisfactorily discharged.

Subject to the foregoing, professors and associate professors, and deans and certain other major administrative officers, are appointed without express limitation of time unless otherwise specified, and all other holders of Corporation appointments are appointed for limited terms, or for terms of indefinite duration subject to the right of the Corporation to fix at any time a terminal date, and their connection with the University ceases at the end of their terms as so limited or fixed unless they are reappointed.

. . . (pp. xx-xxi)

5. **Faculties.** Harvard College and the Graduate School of Arts and Sciences are together under the immediate charge of the Faculty of Arts and Sciences. The Medical School and the School of Dental Medicine are together under the immediate charge of the Faculty of Medicine. The other schools of the University are each under the immediate charge of a Faculty. Each Faculty includes in its membership all the Professors, Associate Professors, and Assistant Professors who teach in the department or departments under the charge of that Faculty. In addition, individual Faculties may, under standing votes approved by the President and Fellows, include other categories of Corporation appointees. Other instructional or administrative personnel may from time to time be appointed to Faculty status but on an individual basis. The President is a member of each Faculty.

A Faculty may, at its discretion, delegate any of its powers relating to ordinary matters of administration and discipline, except the power to inflict the penalties of dismission and expulsion, to Administrative Boards, nominated by the President, and appointed by the Corporation

with the consent of the Overseers. Every such Board shall be subject to the authority of the Faculty from which it is appointed. A Faculty may delegate annually any or all of its powers to a smaller representative body presided over by the President and elected according to rules approved by the Governing Boards. (pp. xxi–xxii)

11. **Discipline.** The several Faculties have authority to impose fines and levy assessments for damages done to property; to inflict, at their discretion, all proper means of discipline; but no student shall be dismissed or expelled from the University, except by a vote of at least two-thirds of the members of his Faculty present and voting thereon; but the Faculty may delegate to its Administrative Board the right to terminate the connection of students in probationary standing. Dismission closes a student's connection with the University, without necessarily precluding his return. Expulsion is the highest academic censure, and is a final separation from the University. (p. xxiii)

APPENDIX 2

Proposed Interim Statement on Rights and Responsibilities

The central functions of an academic community are learning, teaching, research and scholarship. By accepting membership in the University, an individual joins a community ideally characterized by free expression, free inquiry, intellectual honesty, respect for the dignity of others, and openness to constructive change. The rights and responsibilities exercised within the community must be compatible with these qualities.

The rights of members of the University are not fundamentally different from those of other members of society. The University, however, has a special autonomy and reasoned dissent plays a particularly vital part in its existence. All members of the University have the right to press for action on matters of concern by any appropriate means. The University must affirm, assure and protect the rights of its members to organize and join political associations, convene and conduct public meetings, publicly demonstrate and picket in orderly fashion, advocate, and publicize opinion by print, sign, and voice.

The University places special emphasis, as well, upon certain values which are essential to its nature as an academic community. Among these are freedom of speech and academic freedom, freedom from personal force and violence, and freedom of movement. Interference with any of these freedoms must be regarded as a serious violation of the personal rights upon which the community is based. Furthermore, although the administrative processes and activities of the University cannot be ends in themselves, such functions are vital to the orderly pursuit of the work of all members of the University. Therefore, interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University. Theft or willful destruction of the property of the University or its members must also be considered an unacceptable violation of the rights of individuals or of the community as a whole.

Moreover, it is the responsibility of all members of the academic community to maintain an atmosphere in which violations of rights are unlikely to occur and to develop processes by which these rights

are fully assured. In particular, it is the responsibility of officers of administration and instruction to be alert to the needs of the University community; to give full and fair hearing to reasoned expressions of grievances; and to respond promptly and in good faith to such expressions and to widely-expressed needs for change. In making decisions which concern the community as a whole or any part of the community, officers are expected to consult with those affected by the decisions. Failures to meet these responsibilities may be profoundly damaging to the life of the University. Therefore, the University community has the right to establish orderly procedures consistent with imperatives of academic freedom to assess the policies and assure the responsibility of those whose decisions affect the life of the University.

No violation of the rights of members of the University, nor any failure to meet responsibilities, should be interpreted as justifying any violation of the rights of members of the University. All members of the community – students and officers alike – should uphold the rights and responsibilities expressed in this Statement if the University is to be characterized by mutual respect and trust.